

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Petition of US WEST Communications, Inc.	)	CC Docket No. 99-1
for Forbearance from Regulation as a	)	
Dominant Carrier in the Seattle, Washington	)	
MSA	)	

**Comments of the Association for Local Telecommunications Services  
in Opposition to the Petition for Forbearance**

The Association for Local Telecommunications Services ("ALTS"),<sup>1</sup> pursuant to public Notice DA 99-104, released January 4, 1999, hereby files its initial comments in opposition to the petition of U S WEST Communications, Inc. ("U S WEST") asking the Commission to forbear from regulating U S WEST as a dominant carrier in the provision of high capacity special access and dedicated transport for switched access (which U S WEST labels as "high capacity services") in the Seattle, Washington Metropolitan Statistical Area. This is the second petition filed by U S WEST seeking virtually the same Commission ruling for a specific metropolitan area.<sup>2</sup> And, for virtually the same reasons that the Commission should deny the first petition that

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<sup>1</sup> ALTS is the national trade association representing facilities-based competitive local exchange carriers.

<sup>2</sup> See Petition of U S WEST Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, CC Dkt No. 98-157. In addition, similar petitions have been filed by the SBC Companies, see Petition of the SBC Companies for Forbearance from Regulation as a Dominant Carrier for High Capacity Dedicated Transport Services in Specified MSAs, CC Dkt No. 98-277 (filed December 7, 1998); and by Bell Atlantic, see Petition of Bell Atlantic Telephone Companies for Forbearance from Regulation as a Dominant Carrier in Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Washington, D.C., Vermont and Virginia, CC Dkt No. 99-24 (filed January , 1999)

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U S WEST filed, the Commission should deny the instant petition.

The U S WEST petition asks that the Commission, pursuant to Section 10 of the Communications Act of 1934, as amended, exercise its authority to forbear from regulating U S WEST as dominant carrier with respect to high capacity services<sup>3</sup> in the Seattle Metropolitan Statistical Area (MSA). U S WEST argues that the market for high capacity services has become “robustly competitive” and that because the market is competitive U S WEST lacks market power. Therefore, U S WEST concludes, “dominant carrier regulation of U S WEST’s high capacity services is not necessary to ensure that rates and practices are just, reasonable, and not unreasonably discriminatory.”<sup>4</sup>

**I. THE COMMISSION SHOULD NOT CONSIDER THE  
U S WEST PETITION OUTSIDE OF THE  
ACCESS CHARGE REFORM PROCEEDING.**

The Commission has an ongoing proceeding in which issues of pricing flexibility for

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<sup>3</sup> U S WEST defines these services to include “special access and dedicated transport for switched access at DS1 And higher transmission levels (e.g., DS1, DS3 and OCn). No relief is sought for other interstate services, such as switched access and special access, and dedicated transport at DS0 and voice grade transmission levels.” Petition at note 2.

<sup>4</sup> U S WEST Petition at 7-8. U S WEST states that

As a non-dominant provider U S WEST should be subject to permissive detariffing, which would allow, but not require, the filing of tariffs on one-day’s notice with a presumption of lawfulness and without cost support. The Commission also should free U S WEST’s high capacity services from price cap and rate of return regulation . . . . Moreover, the Commission should forbear from applying Section 69.3(e)(7) of its rules so that U S WEST can charge deaveraged rates within the Seattle MSA.

Id. at 8-9.

ILEC access services are raised. In order to conserve Commission resources and preserve the integrity of the Commission's procedural processes, the Commission should consider the U S WEST request as an ex parte filings in the Access Charge Reform proceeding. It was only four and a half months ago that the Commission released a public notice asking parties to update and refresh the record in the Access Charge Reform and Price Cap dockets.<sup>5</sup> The Commission sought additional comment because several parties had filed petitions or ex partes proposing significant changes to the Commission's Access Charge Reform and Price Cap proceedings. In particular, the Commission had received proposals for pricing flexibility for ILECs. Thus, the Commission has before it an ongoing proceeding in which the remedy sought by U S WEST may be adopted by the Commission. Until the Commission completes its consideration of the pricing flexibility proposals in those dockets it would be premature for the Commission to grant the U S WEST petition.

As the Commission is well aware, the instant petition is the third of four similar petitions filed by Regional Bell Operating Companies.<sup>6</sup> If the Commission attempts to deal with each of these requests individually, rather than in the Access Charge Reform docket, it will be barraged with dozens of separate petitions for forbearance that will quickly strain the Commission's already overburdened staff.

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<sup>5</sup> Public Notice FCC 98-256 (released October 5, 1998). See Access Charge Reform, CC Dkt No. 96-262, 12 FCC Rcd 15982 (1997), aff'd sub nom. Southwestern Bell Tel. Co. v. FCC, No. 97-2618 (8th Cir. Aug. 19, 1998); Price Cap Performance Review for Local Exchange Carriers, CC Dkt 94-1, 12 FCC Rcd 16642 (1997), appeal pending sub nom. USTA v. FCC, No. 97-1469 (D.C. Cir.). The Commission has received numerous comments in response to its request for updated information.

<sup>6</sup> See note 2 infra.

**II. ANY PRICING FLEXIBILITY MUST BE PRECEDED BY AN ELIMINATION OF ALL BARRIERS TO COMPETITIVE ENTRY, AND THE ESTABLISHMENT OF SIGNIFICANT EFFECTIVE COMPETITION.**

If the Commission does not defer consideration of the U S WEST petition until it has adopted more general rules on regulatory relief for ILEC provision of services for which competition is developing, it must deny the petition. ALTS has always stated that its members would be the first to applaud if competition had developed to the degree that the ILECs no longer maintained market power. But, none of ILECs are not there yet and U S WEST, specifically, has not shown that it no longer has market power in Seattle. The Commission must be very careful in its analysis of whether market conditions are such that regulatory relief can be granted to the ILECs. As the Commission itself has recognized, the proper sequencing of ILEC pricing flexibility is critical.<sup>7</sup> All barriers to entry must be eliminated prior to the grant of pricing flexibility and competition must be well enough established that anti-competitive conduct by the ILECs could not easily eliminate such competition. Premature deregulatory actions could easily

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<sup>7</sup> In the First Report and Order in the Access Charge proceeding, the Commission discussed the effect that developing competition would have on the regulatory policies relevant to the incumbents and, specifically, regulatory and pricing flexibility. The Commission concluded that:

where competition develops, we will provide incumbent LECs with additional flexibility, culminating in the removal of incumbent LECs' interstate access services from price regulation where they are subject to sufficient competition to ensure that the rates for those services are just and reasonable and are not unjustly or unreasonable discriminatory. (Order at para. 266 (emphasis added)).

The Commission made it clear, however, that competition must precede deregulation: "[d]eregulation before competition has established itself, however, can expose consumers to the unfettered exercise of monopoly power and, in some cases, even stifle the development of competition, leaving a monopolistic environment that adversely affects the interests of consumers." *Id.* at para. 270.

enable the ILECs, with their tremendous market power and resources, to squash any and all nascent competition.

The Commission cannot grant regulatory forbearance under Section 10 unless it makes a finding that enforcement of such regulation is not necessary to ensure that the charges or regulations are just and reasonable and are nondiscriminatory, that enforcement of such regulation or provision is not necessary for the protection of consumers and that forbearance is consistent with the public interest.

U S WEST's basic argument is that because it's market share in Seattle is has declined substantially<sup>8</sup> it no longer has market power and would not be able to price those services in an unreasonable or discriminatory manner. Putting aside for a moment the fact that it is impossible to determine the validity of U S WEST's "factual" predicate of the percentage of the market that it continues to hold<sup>9</sup> and even assuming that all the "facts" in the petition are accurate, U S WEST still has given the Commission no sufficient reason to forbear from regulating these services.

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<sup>8</sup> U S WEST is asserts a number of things about its market share, but generally, it asserts that as of the fourth quarter of 1997, its market share of the High Capacity Market was 72.8 percent.

<sup>9</sup> U S WEST has submitted a study by Quality Strategies that purports to show that the U S WEST has lost a percentage of the market in Seattle. The report, however gives little support for its conclusions and in fact admits, for example, that some of the charts include DS-0 circuit information. Quality Strategies asserts that this information on DS-0 circuits does not appreciably affect the results, but there is no support for that assertion. These types of problems alone should make the Commission very hesitant to grant any regulatory relief. In addition, Quality Strategies states that its results are based primarily on market research surveys and the market share conclusions are based upon equivalent circuits as opposed to revenues. These may or may not be appropriate bases for the conclusions, but the fact is that the numbers behind the results are not given, so ALTS and the U S WEST competitors have no ability to determine the validity of the results.

U S WEST argues that the situation in Seattle is somewhat analogous to the situation when the Commission granted AT&T pricing flexibility in 1995. We note, however, that the Commission did not grant significant regulatory relief to AT&T until it had lost approximately 40 percent of the market and in Seattle U S WEST admits that its overall share of the high capacity market is about 73 percent.<sup>10</sup> In addition, there are very big differences between the interexchange market of the 1980s and the local access market of today. The barriers to entry to the interexchange market were substantially lower than the barriers to entry to the competitive access and local exchange markets today and AT&T had less ability to discriminate or use predatory pricing against its competitors than ILECs have against their competitors. The availability of volume discounts in the interexchange market made entry into that market relatively straightforward and facilities-based interexchange carriers did not have any dependence upon AT&T facilities in the provision of their business. In comparison, CLECs are dependent upon ILECs for interconnection and collocation of their equipment. As the Commission is well aware CLECs have had significant difficulty in obtaining adequate collocation and interconnection to ILECs.<sup>11</sup> Thus, AT&T's ability to unreasonably foreclose or deter entry, or to stifle the competition that had developed was substantially smaller than U S WEST's ability to stifle competition in the competitive access and local exchange markets. Therefore, at the very least the Commission should not consider regulatory relief for U S WEST or any ILEC until competitors have effective and efficient access to ILEC networks as required

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<sup>10</sup> At the rate that U S WEST claims it is losing market share it would be another couple of years before its market share would have dropped to about 60 percent.

<sup>11</sup> See, e.g., Comments of ALTS in In re Deployment of Wireline Services Offering Advanced Telecommunications Services, CC Dkt. 98-147 (filed Sept. 25, 1998).

by the Telecommunications Act.

Finally, U S WEST has not shown that regulation is not necessary to ensure that the charges, practices, classification, or regulations by, for, or in connection with those services are just and reasonable. U S WEST seems only to argue that it has little ability to maintain prices well above those of its competitors and that consumers will not be harmed if its petition is granted. However, U S WEST fails to address its ability to cross-subsidize its high capacity services with revenue obtained from product areas in which it indisputably retains dominant market power.

As the dominant provider of local exchange and local access services in Seattle U S WEST clearly has the ability to lower prices to predatory levels, thereby destroying whatever competition may have developed. Such predatory pricing might benefit consumers in the short term, but clearly would not be in the consumers' best interests in the long run. ALTS is not contending that regulatory forbearance for any service is inappropriate until the ILECs are non-dominant in all services, but certainly the ability to cross-subsidize from non-competitive services must be considered.<sup>12</sup> U S WEST provides no information as to the percentage of its revenues that are derived from the "high capacity services" and thus it is impossible to determine or analyze the extent to which it can use its monopoly revenues to offset predatory prices.<sup>13</sup> Predatory pricing would be especially likely to succeed in discouraging new entrants in the local

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<sup>12</sup> Cf. In re Southwestern Bell Telephone Co., CC Dkt No. 97-158 (released November 14, 1997), ( "Allowing SWBT to respond to RFPs before its market is open to competition creates a situation where SWBT can disadvantage its rivals by denying them access to key inputs." (para. 51)).

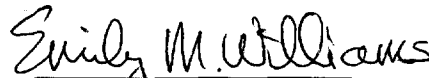
<sup>13</sup> For a discussion of predatory pricing and the effects it can have on competitive entry, see Ordoover, Janusz A. and Saloner, Garth, "predation, Monopolization, and Antitrust" in Handbook of Industrial Organization, (Schmalensee, Richard and Willig, Richard eds. 1989).

access and local exchange markets where the initial investment required to enter the market is substantial.

### **CONCLUSION**

The Commission should deny the U S WEST application. The Commission already has an open proceeding in which the Commission can consider taking small steps to forbear from applying certain regulations if that becomes appropriate. In addition, U S WEST has not satisfied any of the statutory prerequisites for grant of forbearance.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Emily M. Williams".

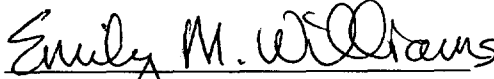
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February 18, 1999



# CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments of the Association for Local Telecommunications Services was served January 18, 1999, on the following persons by first-class mail or my hand service, as indicated.

  
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